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January 5, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: C.C. Docket No. 94-54

Dear Ms. Salas:

Herewith transmitted, on behalf of United States Cellular Corporation, are an original and four copies of its Comments in the above-referenced proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Very truly yours,


Peter M. Connolly

Enclosure

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A B C D E

I. An Overwhelming Case Has Previously
Been Made Against The Imposition Of
An Automatic Roaming Requirement

In August, 1996, the FCC sought comment on whether it should adopt an automatic roaming rule for CMRS licensees.² The overwhelming majority of responses, from large cellular carriers, small cellular carriers, urban and rural cellular licensees, from the Cellular Telephone Industry Association ("CTIA"), from the Personal Communications Industry Association as well as from most PCS licensees were strongly opposed to any such mandatory requirement.³

The commenting parties made the strongest possible case that an "automatic" roaming requirement would constitute an unwarranted intrusion into a thriving competitive marketplace, would be unnecessary and premature, would interfere with complex roaming contracts, would undermine anti-fraud efforts, would have a chilling effect on competition, and would, in general, be an

² See Second Report and Order and Third Notice of Proposed Rulemaking, 11 FCC Rcd 9462 (1996).

³ See, e.g., Comments of CTIA, PCIA, 360° Communications, Inc., AirTouch Communication, Inc., AT&T Wireless, Bell Atlantic Mobile Communications, Inc., BellSouth Corp., GTE Mobilnet, Inc., Rural Cellular Association, PrimeCo Personal Communications, Rural Telecom Group, Sprint Spectrum and Vanguard Cellular Systems, Inc.

example of a "solution" to a non-existent problem which would actually create new and real problems.

In short, the commenting parties successfully demonstrated that the Commission should leave well enough alone with respect to the regulation of roaming.

And there matters appeared to have rested for the last thirteen months. But now the Commission, not in response to any petition from PCS licensees which have failed to secure roaming contracts, but evidently on its own motion, has sought further comment on automatic roaming.

However, nothing has changed in the last thirteen months to improve this proposal. If anything, it has become even a worse idea in the interim.

This is true for two reasons. First, cellular-PCS competition has obviously exponentially increased since 1996, thus diminishing the need for bureaucratic intrusions into roaming negotiations among CMRS carriers. In the next few years, PCS service will continue to expand. In this transformed marketplace, there is even less justification than there would have been previously for the FCC to force unwilling carriers into specific roaming arrangements.

A second reason for Commission forbearance is the alteration of the CMRS regulatory climate in the past year. In 1997, the FCC

adopted many new and expensive regulatory mandates, some of which have been imposed by the Commission at Congress's behest and some of which have reflected the FCC's ideas of what will serve the public interest. For example, CMRS licensees will shortly have to make new "universal service" payments to subsidize rural telephone services, schools, libraries and rural health care providers,⁴ will have to provide "number portability,"⁵ will have to provide "enhanced 911" capabilities to anyone with a useable cellular telephone,⁶ and will have to modify their systems to meet the requirements of the Communications Assistance in Law Enforcement Act ("CALEA").⁷

USCC, along the bulk of the CMRS industry, has not opposed these new requirements. Nor, in contrast to local exchange and interexchange carriers, who have fought each other in every possible forum, USCC and other cellular carriers have not attempted

⁴ See, e.g., Third Order on Reconsideration in C.C. Docket 96-45, FCC 97-471, released December 16, 1997.

⁵ See First Memorandum Opinion and Order on Reconsideration in C.C. Docket 95-116, 12 FCC Rcd 7236 (1997).

⁶ See, Memorandum Opinion and Order in C.C. Docket 94-102, FCC 97-402, released December 23, 1997.

⁷ See, Notice of Proposed Rulemaking in C.C. Docket 97-213, FCC 97-356, released October 10, 1997.

to use the FCC's processes or the courts to block the emergence of PCS competition in their markets.

However, what we do ask in light of these and other instances of additional regulation, is that the FCC now restrain itself from imposing additional bureaucratic requirements, such as automatic roaming, on CMRS carriers which are not statutorily mandated.

Finally, we re-emphasize the most important reason why the Commission should not adopt an automatic roaming requirement, that is, the extraordinary difficulty, if not impossibility, of enforcing such a requirement.

The 1996 notice of proposed rulemaking in this proceeding blandly referred to automatic roaming agreements "on non-discriminatory rates, terms, and conditions." "Non-discriminatory" rates are not necessarily the same rates for all carriers. Rather, they are rates comparable to those offered "similarly situated" carriers.

If the Commission adopts this rule, it is inviting literally hundreds of adjudications involving such questions as whether CMRS carriers may charge higher roaming rates to distant as opposed to neighboring systems or their own systems as opposed to competitors, or lower rates to carriers with more customers than others, or whether single system rural operators may support their buildouts

through relatively high roaming rates, or whether cellular carriers may charge PCS operators higher rates because of billing problems, or vice versa, or whether CMRS systems may still suspend their customers' ability to roam automatically on certain other systems because of fraud problems.

Further, complex issues involving "non-discrimination" will multiply as 10 MHz PCS services increase and differentiate themselves. The potential for hair-splitting litigation will be enormous.⁸

Before the Commission marches into this regulatory morass, it ought to make certain that it has no choice, i.e. that it faces a problem implicating the public interest which can be solved in no other way. Judging from the questions posed in the December 5, 1997 public notice, the FCC does not believe that intra-cellular

⁸ It is also worth noting that the FCC Wireless Bureau's Commercial Radio Division and its predecessor, the Mobile Services Division of the Common Carrier Bureau, have been well aware of the intractability of these questions for the past fifteen years. During that time, to the knowledge of undersigned counsel, the Commission has not issued any decisions concerning "discriminatory" roaming rates, an abstention which reflects a correct understanding that any decision on that subject would only be the first of hundreds. Why the Commission is proposing to reopen this issue now, when competition is about to eliminate any remaining wireless "bottleneck" questions, is truly mystifying.

roaming arrangements pose such a problem. Rather, the FCC perceives the difficulty to lie in the area of cellular-PCS roaming arrangements. As will be shown below, however, as far as USCC knows, there is no problem regarding such roaming arrangements which warrants the drastic solution proposed.

II. USCC Is Concluding Roaming Arrangements with PCS Carriers

As of today, USCC has conducted multi-market roaming arrangements with the PCS subsidiaries of Alltel, BellSouth, Southwestern Bell, Sprint PCS, Western Wireless and Wireless North. USCC is in negotiations with PCS PrimeCo, Nextwave, U.S. West, PCS South, and Ameritech and expects that those negotiations will conclude with agreements. USCC welcomes agreements with all PCS providers on all frequency blocks in all locations.

However, as with cellular roaming arrangements, PCS-cellular roaming agreements are complex contracts which can be and are structured to reflect mutually beneficial commercial understandings. They cannot be negotiated overnight and should not be subject either to unworkable "one size fits all" pricing requirements or to vague, litigation breeding, non-discrimination mandates.

The FCC's intrusion into these negotiations would not, to put it mildly, be helpful. We once again ask that the FCC stay its hand.

Conclusion

In conclusion, it should once again be noted that the automatic roaming proposal forward by the FCC has been made on its own motion and not as a consequence of statutory compulsion. When the Commission acted, for example, to impose far-reaching reregulation on the cable television industry or to create a structure for collecting regulatory fees, or to impose universal service payment obligations on CMRS licensees, it did so pursuant to congressional direction through amendments of the Communications Act. In such cases, the fundamental public interest decision to proceed with a given course of action has been made by Congress and the FCC acts in its capacity as an implementing agency. But, where, as here, the FCC does not have to impose new regulatory burdens on a given industry, it is the Commission's duty, we submit, to judge proposed new regulations skeptically and subject them to a searching analysis before they are imposed. If such an analysis is made here, the Commission's automatic roaming proposal surely cannot be adopted.

Respectfully submitted,

UNITED STATES CELLULAR CORPORATION

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January 5, 1998

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